

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11
12 **IN RE PG&E CORPORATION SECURITIES**
13 **LITIGATION**

Civil Action No. 5:18-cv-03509-EJD

UPDATED JOINT STATUS REPORT

14
15
16
17 On January 29, 2019, both PG&E Defendants¹ in the above-captioned securities class
18 action filed for bankruptcy protection. *See In re PG&E Corporation, et al.* (the “Chapter 11
19 Proceeding”), Case No. 19-30088 (Bankr. N.D. Cal.), ECF No. 1.

20 On October 4, 2019, the non-PG&E Defendants filed motions to dismiss Plaintiffs’ Third
21 Amended Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure [ECF
22 Nos. 148, 155], which motions were fully briefed January 13, 2020.
23
24

25
26 ¹ The parties refer to the two corporate Defendants, PG&E Corporation (the publicly traded
27 holding company) and Pacific Gas & Electric Company (its wholly-owned utility), collectively as
28 “PG&E.”

1 On June 20, 2020, the bankruptcy court entered an order (the “Confirmation Order”)
 2 confirming PG&E’s Chapter 11 Plan of Reorganization (the “Plan”). *See* Chapter 11
 3 Proceeding, Confirmation Order, ECF No. 8053; *see also* Plan, ECF No. 8053-1 (Ex. A to
 4 Confirmation Order).

5 On March 30, 2021, this Court directed the parties to file an updated status report on the
 6 progress of the Chapter 11 Proceeding, and in particular, to advise this Court on the status of the
 7 shareholder claims asserted therein against PG&E. ECF No. 192. The Parties provide the
 8 following Updated Joint Status Report in response.

10 LEAD PLAINTIFF’S POSITION

11 We represent the Public Employees Retirement Association of New Mexico (“PERA” or
 12 “Lead Plaintiff”), the Court-appointed lead plaintiff in the above-captioned consolidated action.

13 I. Background

14 In the Chapter 11 Proceeding, the Plan classifies and treats securities claims against PG&E,
 15 with two crucial caveats.

16 First, the Plan acknowledges that its treatment of shareholder claims does not fully
 17 compensate those claimants, conceding that these claims are “subordinated” by the Bankruptcy
 18 Code and “impaired” (not paid in full) under the Plan. *See* Plan §§ 1.108 (subordination) & 4.14(b)
 19 (impairment).

20 Second, the Plan is explicit that it provides only for PG&E’s “claim share,” which is an
 21 amount less than full damages. Rather than paying subordinated shareholder claims in full and in
 22 cash, the Plan instead provides that shareholder claims are to be paid at reduced amounts in shares
 23 of reorganized PG&E’s common stock – and only if such claims are first “allowed” by the
 24 bankruptcy court. The extent of reduction is complicated. PG&E’s “claim share” reduction is
 25 calculated by (a) taking the full amount of “an Allowed HoldCo Rescission or Damage Claim,”
 26
 27
 28

1 then (b) subtracting an “Insurance Deduction,”² after which (c) this reduced total is then further
 2 reduced through division by a factor of 65, or 46.5, or 37.25, or 32.5. *Id.* § 1.108 (defining
 3 “HoldCo Rescission or Damage Claim Share”). The Plan contains an algorithm for determining
 4 which of the four division factors is used by comparing (i) the purchase date of a given share to
 5 (ii) four of the nine dates on which PG&E’s stock price is alleged in this Action to have declined
 6 because of fraud.³ *Id.*

7 While acknowledging the particulars of these claims, PG&E has also stated that it intends
 8 to dispute them on various grounds. *See, e.g.,* Chapter 11 Proceeding, Debtors’ Confirmation
 9 Brief, ECF No. 7528 at 70 & n.23.

10 Both the Plan and the Confirmation Order expressly provide that they do not have any
 11 direct impact on securities claims asserted against PG&E’s non-debtor officers, directors, or
 12 underwriters. *See* Confirmation Order ¶ 52(c); Plan § 10.9(c) (“[N]othing in the Plan is intended
 13 to, nor shall the Plan be interpreted to, effect a nonconsensual release, satisfaction, compromise,
 14

15 ² The Plan defines the “Insurance Deduction” as “any cash payments received from an Insurance
 16 Policy (other than cash payments received from a Side A Policy) on account of all or any portion
 17 of an Allowed HoldCo Rescission or Damage Claim, to be applied proportionally in accordance
 18 with . . . the definition of ‘HoldCo Rescission or Damage Claim Share’ above.” Plan § 1.127A.
 19 Lead Plaintiff believes that this provision is improper; it has appealed the Confirmation Order on
 20 the grounds that such deductions are permissible under federal law *only* to ensure that recoveries
 21 do not exceed 100% of claim values, yet this Insurance Deduction reduces claims with no such
 22 limitation. *See Public Employees Retirement Association of New Mexico v. PG&E Corporation*
 23 *et al*, Case No. 20-cv-01708. The appeal is fully briefed and submitted, and it also has a pending,
 24 fully briefed motion to dismiss.
 25

26 ³ The Plan also includes two “classes” (in the bankruptcy sense, not in the Rule 23 sense) for debt
 27 purchaser claims. *See* Plan §§ 4.12, 4.32.
 28

1 settlement or discharge of a holder of a Claim or Cause of Action in favor of a party that is not a
2 Debtor . . .”).

3 II. Status of the Securities Claims in the Chapter 11 Proceeding

4 To date, over 7,100 securities claims have been filed in the bankruptcy court, listing claim
5 amounts totaling in the billions of dollars.⁴ In the Summer and Fall of 2020, Lead Plaintiff and
6 PG&E submitted competing proposals for how these claims should proceed in bankruptcy court.

7 Lead Plaintiff proposed that a class of these claimants be certified by the bankruptcy court
8 for disposition of common issues. *See* Chapter 11 Proceeding, ECF No. 9152. PG&E proposed
9 that the bankruptcy court begin implementing claims reconciliation procedures (*e.g.*, objections to
10 securities claims), as well as authorize PG&E to engage in a three-pronged ADR process for some,
11 but not all, of these claims. The proposal would be defined by more than 50 pages of rules and
12 procedures that PG&E submitted. Chapter 11 Proceeding, ECF No. 8964 (the “Claims Procedure
13 and ADR Motion”).

14 Lead Plaintiff opposed PG&E’s Claims Procedure and ADR Motion (Chapter 11
15 Proceeding, ECF No. 9189), and more than 50 claimants filed notices joining Lead Plaintiff’s
16 proposal and/or Lead Plaintiff’s opposition to PG&E’s proposal. These claimants ranged from
17 *pro se* individuals to prominent institutional investors such as CalPERS, CalSTRS, and Chevron.
18 In contrast, no claimants ultimately joined PG&E’s ADR proposal, or its opposition to Lead
19 Plaintiff’s class certification proposal. The bankruptcy court adopted PG&E’s Claims Procedure

21 ⁴ This number of filings comprises closer to **10,000** actual claimants, after so-called “bulk” claims
22 – single claim forms listing multiple claimants – are counted as additional claimants. The total
23 amount of asserted damages is impossible to report precisely because roughly half of the claimants
24 identify their claim damages as “unliquidated,” *i.e.*, with amounts to be determined at a later date.
25 The aggregated total of the other, ***liquidated*** claims alone exceeds \$8 billion. *See*
26 <https://restructuring.primeclerk.com/pgc/Home-ClaimInfo?RescissionorDamage=MTY=>
27 (PG&E’s bankruptcy claims administration website listing all filed securities claims).
28

1 and ADR proposal, with revisions, and the following qualification: “If it turns out that the offer
 2 and acceptance, mediation, and related [ADR] procedures failed significantly, we can revisit the
 3 question of whether remaining securities fraud claimants would be better served by some variation
 4 on a Rule 7023 [class certification] process.” *See* Chapter 11 Proceeding ECF No. 9752, Tr. of
 5 Hearing dated 12/4/2020 at 9:2-6. Through this process, PG&E will be able to treat thousands of
 6 investors – all of whom have suffered the same harms – differently, based on who can afford to
 7 pay for legal representation and experts to appropriately evaluate the damages at issue.

8 PG&E has recognized that, should claimants and PG&E not reach agreement through the
 9 Claims Procedure and ADR process, then the bankruptcy court “may be asked to decide the merits”
 10 of those claims. *See* Chapter 11 Proceeding, ECF No. 9582, Tr. of Hearing dated 11/18/2020 at
 11 12:6-15.

12 As of this writing, Lead Plaintiff is not aware of a single securities claim in the Chapter 11
 13 Proceeding being resolved, through the Claims Procedure and ADR process or otherwise.

14 Lead Plaintiff, as well as Plaintiffs York County on behalf of County of York Retirement
 15 Fund (“York County”), City of Warren Police and Fire Retirement System (“City of Warren”),
 16 and Mid-Jersey Trucking Industry & Local No. 701 Pension Fund (“Mid-Jersey”) are excluded
 17 from the ADR procedures. *See* Chapter 11 Proceeding, ECF No. 10015-1 at 5. Thus, at some
 18 point, the bankruptcy court will face the merits of the claims against PG&E that are also at issue
 19 in the securities action before this Court. The scope of discovery that will be permitted on the
 20 merits as to these claims is undetermined. A further open issue remains regarding possible
 21 withdrawal of the reference from the bankruptcy court before that point, so an Article III court can
 22 adjudicate the complex federal securities questions at issue rather than the bankruptcy court. *See*
 23 Section III, *infra*.

24 **III. Overlap of Issues before this Court and Risk of Inconsistent Decisions**

25 Lead Plaintiff maintains its position from its prior Status Letter dated August 7, 2020: that
 26 the Chapter 11 Proceeding “will necessarily involve addressing identical issues this Court may be
 27 called on to consider, including whether the 19 asserted false and misleading statements made over
 28 three-and-a-half years are actionable (including the elements of falsity, materiality, and scienter),

1 against PG&E by more than 7,000 current and former PG&E securities holders. As set forth in
2 PG&E's Plan and the Confirmation Order, the unmatured notes at issue in this Action were
3 reinstated.

4 While Defendants expect that the ongoing bankruptcy claim process will affect, among
5 other things, the size and potential damage claims of the putative classes in this Action,
6 Defendants believe that their pending motions to dismiss present this Court with clear grounds
7 for dismissal with prejudice of the securities claims asserted against the non-PG&E Defendants.

8 Defendants take no position with regard to the potential issues raised by Lead Plaintiff
9 about PG&E's bankruptcy claims resolution process.

1 DATED: April 9, 2021

/s/ Thomas A. Dubbs

Thomas A. Dubbs (*pro hac vice*)

2
3 LABATON SUCHAROW LLP
THOMAS A. DUBBS (*pro hac vice*)
CAROL C. VILLEGAS (*pro hac vice*)
4 JEFFREY A. DUBBIN (#287199)
140 Broadway
5 New York, NY 10005
Telephone: (212) 907-0700
6 Facsimile: (212) 818-0477
Email: tdubbs@labaton.com
7 cvillegas@labaton.com
jdubbin@labaton.com
8

9 *Counsel for Lead Plaintiff the Public Employees
Retirement Association of New Mexico*

10 WAGSTAFFE, VON LOEWENFELDT, BUSCH &
RADWICK, LLP
11 JAMES M. WAGSTAFFE (#95535)
FRANK BUSCH (#258288)
12 100 Pine Street, Suite 725
San Francisco, California 94111
13 Telephone: (415) 357-8900
Facsimile: (415) 371-0500
14 Email: wagstaffe@wvbrlaw.com
busch@wvbrlaw.com
15

16 *Liaison Counsel for the Class*

17 ROBBINS GELLER RUDMAN
& DOWD LLP
18 WILLOW E. RADCLIFFE (#200087)
KENNETH J. BLACK (#291871)
Post Montgomery Center
19 One Montgomery Street, Suite 1800
San Francisco, CA 94104
20 Telephone: 415/288-4545
415/288-4534 (fax)
21 willowr@rgrdlaw.com
kennyb@rgrdlaw.com
22

23 ROBBINS GELLER RUDMAN
& DOWD LLP
24 DARREN J. ROBBINS (#168593)
BRIAN E. COCHRAN (#286202)
655 West Broadway, Suite 1900
25 San Diego, CA 92101
Telephone: 619/231-1058
26 619/231-7423 (fax)
darrenr@rgrdlaw.com
27 bcochran@rgrdlaw.com
28

Counsel for the Securities Act Plaintiffs

VANOVERBEKE, MICHAUD & TIMMONY, P.C.
THOMAS C. MICHAUD
79 Alfred Street
Detroit, MI 48201
Telephone: (313) 578-1200
Facsimile: (313) 578-1201
Email: tmichaud@vmtlaw.com

Additional Counsel for the Securities Act Plaintiffs

SIMPSON THACHER & BARTLETT LLP

/s/ Stephen P. Blake

Stephen P. Blake

STEPHEN P. BLAKE (SBN 260069)
2475 Hanover Street
Palo Alto, CA 94304
Telephone: (650) 251-5000
Facsimile: (650) 251-5002
Email:

PAUL C. CURNIN (*pro hac vice*)
NICHOLAS S. GOLDIN (*pro hac vice*)
425 Lexington Avenue
New York, NY 10017
Telephone: (212) 455-2000
Facsimile: (212) 455-2502
Email: pcurnin@stblaw.com
ngoldin@stblaw.com
rachel.sparksbradley@stblaw.com

*Attorneys for Defendant Directors Barbara L.
Rambo, Lewis Chew, Fred J. Fowler, Richard
C. Kelly, Roger H. Kimmel, Richard A.
Meserve, Forrest E. Miller, Maryellen C.
Herringer, Barry Lawson Williams, Rosendo
G. Parra, Anne Shen Smith and Eric D.
Mullins*

DAVIS POLK & WARDWELL LLP

/s/ Neal A. Potischman

Neal A. Potischman

CHARLES S. DUGGAN (*pro hac vice*)
DANA M. SESHENS (*pro hac vice*)
CRAIG T. CAGNEY (*pro hac vice*)
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 701-5800
Email: charles.duggan@davispolk.com
dana.seshens@davispolk.com
craig.cagney@davispolk.com

NEAL A. POTISCHMAN (SBN 254862)
1600 El Camino Real
Menlo Park, California 94025
Telephone: (650) 752-2000
Facsimile: (650) 752-2111
Email: neal.potischman@davispolk.com

Attorneys for Defendant Underwriters

McDERMOTT WILL & EMERY LLP

/s/ Jason D. Strabo

Jason D. Strabo

MICHAEL A. PIAZZA (State Bar No. 235881)
GREGORY R. JONES (State Bar No. 229858)
JASON D. STRABO (State Bar No. 246426)
2049 Century Park East, Suite 3200
Los Angeles, CA 90067-3218
Telephone: (310) 277 4110
Facsimile: (310) 277 4730
Email: PG&E@mwe.com

STEVEN S. SCHOLLES (admitted *pro hac vice*)
444 West Lake Street
Chicago, IL 60606-0029
Telephone: (312) 372-2000
Facsimile: (310) 984-7700
PG&E@mwe.com

*Attorneys for Defendants Anthony F. Earley, Jr.,
Patrick M. Hogan, Christopher P. Johns, Julie M.
Kane, Dinyar B. Mistry, Nickolas Stavropoulos, David
S. Thomason, and Geisha J. Williams*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 9, 2021 I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a Notice of Electronic Filing to all counsel of record.

/s/ Thomas A. Dubbs
THOMAS A. DUBBS